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IN THE

Supreme Court of the United States

OCTOBER TERM, 1967

No. 962

THOMAS A. McMANIGAL,

Petitioner,

vs.

SEYMOUR SIMON, et al.,

Respondents.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

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To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioner, Thomas A. McManigal, prays that this Court will issue a writ of certiorari to the United States Court of Appeals for the Seventh Circuit to review a judgment of that court, entered July 21, 1967, affirming a judgment of the United States District Court for the Northern District of Illinois, Eastern Division, denying a motion to vacate an order dismissing his amended complaint for a declaratory judgment and injunctive relief against the Board of Commissioners of Cook County, Illinois, and the State's Attorney of Cook County, respectively, for want of jurisdiction.

OPINIONS BELOW.

The District Court rendered no written opinion, but its order (A. 27) cited authority for lack of jurisdiction to grant injunctive relief. The opinion of the Court of Appeals for the Seventh Circuit is not reported yet. It is printed as Appendix A.

JURISDICTION.

The jurisdiction of this Court is based on 28 U.S.C. § 1254(1). Jurisdiction of the District Court was predicated on 28 U.S.C. § 1343 and on 42 U.S.C. § 1983, § 1985, and § 1988. Jurisdiction to convene a three-judge court was based on 28 U.S.C. § 2281 and § 2284.

The judgment affirming the judgment of the trial court was entered on July 21, 1967, and a timely petition for rehearing was denied on September 27, 1967.

QUESTIONS PRESENTED.

Whether an amended complaint charging that (pursuant to a conspiracy between the majority of the members of the executive committee of a privately founded and privately conducted and maintained corporation organized by lawyers under a special charter as their law library and workshop for their mutual benefit, and not for profit, and successfully operated by them as such for over one hundred and ten years, and the board of county commissioners and the state's attorney of the county, for the corporation to turn over all its assets to the county without any compensation, under a purported application of the *cy pres* doctrine, over the objection by an almost unanimous vote of the members attending a special meeting called to approve or disapprove the transaction, in order to establish a publicly founded and publicly maintained county law library under void statutes) the corporation and county commissioners have filed a suit and obtained a judgment approving their contract and ordering it to be carried into execution when affirmed by final review, and that the majority of the executive committee of the corporation and the county board of commissioners are threatening to file suit to cancel a lease under which the corporation occupies space in the county building which has several years to run (to the injury of plaintiff and other members of the corporation by taking their property from them without just compensation, and depriving them of their personal and property rights without due process of law, and denying to them the equal protection of the

laws, and impairing the obligation of their charter and the lease, in violation of Art. 1, sec. 10 of the United States Constitution, and the fourth, fifth, and fourteenth amendments thereto), and praying that the district court enter a declaratory judgment that the statute seeking to interfere with peaceable possession of the premises and to dispossess and oust the corporation from its leased premises, states a federal cause of action and requires the convening of a three-judge court and the issuance of an injunction until review by this Court.

CONSTITUTIONAL PROVISIONS, STATUTES AND ORDINANCES.

(See Appendix B)

STATEMENT OF THE CASE.

On July 1, 1966, petitioner filed his complaint *in rem*, under *Ex parte Young*, 209 U.S. 123 (1908) (A. 1), to stop Cook County's interference with the Institute's peaceable possession of its premises by trespass or by taking action in the state courts to cancel the 11th decennial, bilateral lease (A. 16).

On August 5, 1966 (A. 2), the respondents moved to dismiss that complaint because (1) no jurisdiction over the subject matter; (2) no claim on which relief could be granted; (3) no justiciable case or controversy; (4) no federal question; (5) no invasion of rights under the 4th, 5th, or 14th amendments to the Federal Constitution.

The respondents' motion to dismiss was granted (A. 2) on the first two grounds, on August 31, 1966. On September 7, 1966, however, the order was vacated (A. 2) and leave granted to file the tendered Amended Complaint *in rem* (A. 3-14). It was dismissed *sua sponte instanter*, without any comment or reason (A. 2, 21). It will be seen, at page 10 of this Petition that abstention, under § 2283, was the real and sole reason therefor.

The petitioner's Amended Complaint, filed as a class suit for himself and all members of The Chicago Law Institute, Illinois lawyers, and citizens, alleged that the Chicago Law Institute is a private, non-profit (net-cost, by definition) membership service corporation (par. 4, A. 4-5), and drew in question (par. 2, A. 4) the unconstitutionality of the 1963 amendment to the County Law Libraries Act, 1965 Ill. Rev. Stat., c. 81, § 81, and the Cook

County ordinances of December 11, 1962, September 30, 1963, June 17, 1965 and November 23, 1965, as sought to be applied to petitioner and all Institute members, as had the appellants in the companion cases on appeals from the Supreme Court of Illinois final orders; but the principal relief prayed was different: injunction against Cook County officers taking any step in the state courts to cancel or annul the eleventh decennial, bilateral lease (A. 16-19) until review by this Court. Petitioner relied on *Ex parte Young,* 209 U.S. 123 (1908), and asked for a three-judge district court, pursuant to Title 28, U.S.C. § 2281, to decide if the evidence justified such relief, a declaratory judgment, and retention of jurisdiction until final review by this Court (A. 13-14).

Jurisdiction was invoked (par. 1, A. 3) because (1) the matter in controversy exceeded $10,000, exclusive of interest and costs (28 U.S.C. § 1331); and (2) the Institute member's property and personal rights, privileges and immunities secured them by the U.S. Constitution and laws, were, under color of state statutes and ordinances, threatened and denied them (Title 28 U.S.C. § 1343; Title 42 U.S.C. §§ 1983, 1985 and 1988).

The petitioner's Amended Complaint (A. 5-6 failed to designate par. 5) set out in full the 11th decennial, bilateral lease, executed on March 11, 1958 (A. 16-19), Cook County's December 11, 1962 ordinance reaffirming said lease (A. 34, 9 lines from top), and the conspiracy to deprive the Law Institute and its members of their personal and property rights under that lease (pars. 8-13, A. 7-9). Pars. 14-18 (A. 9-11) recite a long series of Cook County conspiratorial and oppressive acts to obstruct or defeat the decree of July 13, 1966 (Title 42 U.S.C. § 1985),

culminating in physical ouster, on August 22, 1966, of the Institute and its members from their workshop, denying liberty of ingress and egress under color of the ordinance of November 23, 1965, and discriminating in the treatment accorded them vis a vis other of its tenants.

Par. 8 of the Amended Complaint (A. 7) stated very clearly that, at their special meeting on June 18, 1965, the Institute members present thereat, in person and by proxy, rejected almost unanimously, by about 600 votes against 13, the Institute Board's recommendations to donate, to file *cy pres* suit, and to dissolve (A. 35-37).

Pars. 10 and 11 of the petitioner's Amended Complaint (A. 7-8) stated that, notwithstanding such complete repudiation, on June 18, 1965, 4 of the 7 members of the Institute's Board voted illegally, on November 12, 1965, to file the state suit, nevertheless, and the respondents knew it, when they passed the ordinance, on November 23, 1965, authorizing its president, Seymour Simon, to enter into the "donative" contract for the Board of County Commissioners of Cook County, in that (1) the purported "donative" contract, later designated as Exhibit C attached to the Amended Complaint in the Cook County Circuit Court, in 65 Ch 6863, had not been presented to the Institute's Board before or at the November 12, 1965 Institute Board meeting for study and analysis, although the Corporation's Secretary certified that it had been presented thereat; (2) Cook County had, by ordinance on June 17, 1965, appointed Allman and Cecchini, 2 of the 4 Institute Board members to the Cook County Library Advisory Board (1963 amendment to the County Law Libraries Act, 1965 Ill. Rev. Stat., c. 81, § 81, par. 4), which fact was never disclosed to the Institute members

at their special meeting the next day, or ever, and that Allman and Cecchini had voted the 2 of the 4 affirmative votes blindly, and in breach of their fiduciary duty to the Institute members, to authorize the Institute's president, another Cook County appointee to the Cook County Library Advisory Board, to enter into the "donative" contract with Cook County, their principals.

The petitioner's Amended Complaint (pars. 14 and 16, A. 9-10) alleged that, despite the built-in supersedeas on page 7 of the Exhibit C (A. 8), and other of its provisions (A. 8-9), Cook County, on August 10, 1966, volunteered, in defiance of the decree entered July 13, 1966 and for the purpose of evading, obstructing and defeating it, to "operate the (Institute) library as a County Law Library under the applicable statutes" (meaning 1965 Ill. Rev. Stat., c. 81, § 81, the County Public Libraries Act, as amended in 1963 to apply to Cook County—A. 41, 2d par.). Cook County has, indeed, so operated the Chicago Law Institute Library under Cook County promulgated rules, exercising all the incidents of ownership without formal bill of sale and in violation of the trial judge's directive order, entered August 22, 1966, to maintain the *status quo* until review by this Court; i.e., to operate the Chicago Law Institute Library in the same manner as prior to the entry of the decree on July 13, 1966, under the Law Institute's sole management (Jurisdictional Statement in companion cases on appeal from final orders of the Illinois Supreme Court).

On October 6, 1966, petitioner filed a motion to vacate the trial court's order of September 7, 1966, dismissing his Amended Complaint *sua sponte instanter,* without stating any reason. After summarizing the ultimate facts,

paragraph by paragraph, alleged in the Amended Complaint, (A. 23-24), par. 7 of the Memorandum Supporting the Motion to Vacate (A. 24) stated that these ultimate facts, admitted to be true by the dismissal of the Amended Complaint, indicated (1) the deprivation of his and the Institute's members' personal and property rights, violative of the 4th, 5th and 14th amendments to the U.S. Constitution and the implementary Title 28 U.S.C. § 1343, and Title 42 U.S.C. §§ 1983, 1985, 1988 by the seizure of its premises and books; (2) a violation of Art. I, § 10 by impairing its obligations under the 11th decennial, bilateral lease contract.

On October 13, 1966, the trial court refused to vacate said order of September 7, 1966, because, as noted on the order, Title 28 U.S.C. § 2283, *Sarfaty* v. *Nowak,* 369 F(2) (7th CCA, October 5, 1966) and *Dombrowski* v. *Pfister,* 380 U.S. 479, 483-485 forbade it to grant the injunction prayed (A. 27).

On November 10, 1966, the plaintiff unsuccessfully filed a Motion to Reconsider the order of October 13, 1966. The motion was supported by the Affidavit of William Hettleman and Exhibits X, Y, and Z bearing on the federal questions involved, and a 9 page Memorandum of Law examining in the minutest detail the cases of *Ex parte Young, Dombrowski,* and a very closely analogous case, *Amer. Houses, Inc.* v. *Schneider,* 211 F. (2) 880 (3d CCA, 1954) (A. 28-51). The trial court finally entered its order on December 12, 1966, without any comment or reason, denying the Motion to Reconsider. (A. 52).

CONCISE ARGUMENT FOR ALLOWING THE WRIT.

A. Section 2283 Was Inapplicable.

1. Abstention was, thus, the only issue for the Court of Appeals to decide. Petitioner's counsel tried to confine his oral argument before it to that issue. Respondents argued there their granted motion to dismiss his original complaint. The order thereon had been vacated upon filing of an Amended Complaint (A. 2(h), 21). The Court of Appeals' opinion (Appendix A) seems to indicate it passed on triable issues of fact, the function of the requested three-judge district court.

A similar situation arose in the Ninth Circuit Court of Appeals in *Marshall* v. *Sawyer,* 301 F(2) 639 (1962). The Sawyer trial court dismissed *solely* on sec. 2283, as did the trial court in the case at bar. On appeal, Sawyer argued that the complaint made no claim on which relief could be granted. Observed the Court, at p. 647:

> "While this was one ground of the motion, *it was not a ground relied upon by the District Court in dismissing the action.*
>
> "A complaint is not subject to dismissal upon this ground unless it appears *beyond reasonable doubt* that plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Cawley* v. *Gibson,* 355 U.S. 41. *Gruen Watch* v. *Artists Alliance,* 9 Cir. 191 F(2) 700."

The Ninth Circuit Court of Appeals then stated that the Complaint was sufficient to withstand a motion to dismiss on the indicated ground, and that upon remand, the defendants could test the complaint's adequacy, and

the plaintiff will have a chance to amend the complaint in that respect.

2. The prayer of the petitioner's Amended Complaint did not ask a *stay* of any proceedings in any state court, but only to stop the Board of Commissioners of Cook County from *starting* one. Hence, sec. 2283 did not grant the trial court power to refuse to grant an injunction if the facts, upon trial, warranted such action.

3. *Sarfaty* was clearly not in point.

4. *Dombrowski* held the abstention of the two district judges error, even Mr. Justice Harlan agreeing in dissent (p. 502) that they should have retained jurisdiction till the state court construed the state anti-subversive statute, even as the trial court in the case at bar should have retained jurisdiction, as prayed (A. 14).

An elaborate footnote on § 2283 appears as No. 2, on page 484 of this Court's opinion in *Dombrowski,* Mr. Justice Brennan commenting:

> "This statute and its predecessors do not preclude injunctions against the institution of state court proceedings, but only bars *stays* of suits already instituted. See *Ex parte Young,* supra."

The affirmance by the Seventh Circuit Court of Appeals was in direct conflict with this Court's *Dombrowski* holding!

5. Even if § 2283 did apply, petitioner pointed out to the lower courts that, in addition to the exceptions there stated, the most firmly established one is that the trial court cannot abstain where a proceeding *in rem* is first filed in the federal trial courts. *Toucey* v. *N. Y. Life,* 314 U.S. 118. A divided Court there agreed unanimously on this point: the majority at p. 139; the minority at p. 145.

B. The Petitioner's Amended Complaint Complied With Title 28, Secs. 1343 And 2281; And Title 42, Secs. 1983, 1985 And 1988.

1. It stated adequately a cause of action.

a. Judge Wisdom's following views in *Dombrowski*, 227 F.S., approved by this Court, are applicable:

"Assuming the truth of the complaint, as the Court HAD to do in order to dismiss the suit, . . . *Whether the State is misusing its power can be determined only after a fair and full hearing . . . There is no way of deciding whether a law is applied unconstitutionally without hearing evidence as to its application.* Evidence was also admissible to show the purpose, operation and effect of the law (at pp. 571, 2d column, 572, 1st column) . . .

"The Court did not get around to stating why the complaint is defective. The fact that the suit is against the State and its officers might affect judicial discretion to withhold the relief prayed for, but *it does not affect the plaintiff's right or cause of action* (at p. 574, 2d column).

"The constitutionality of a statute, *valid on its face*, may be assailed by proof of facts tending to show that the statute, *as applied to a particular article* (or person) *is without support in reason* . . . As Mr. Justice Holmes has said: 'The determination as to the plaintiffs' rights turns almost wholly upon the facts to be found . . . *All their constitutional rights, we repeat, depend upon what the facts are found to be.' . . . Perhaps the State is being falsely accused; perhaps not. I know this, however: the plaintiffs have a right to sue in the federal district court and fair play entitles them to a day in court to make their proof.*" (at p. 575) (Italics supplied).

b. Title 28 U.S.C. § 1343 protects against 2 or more persons conspiring to obstruct or defeat the due course of justice. What better evidence is needed than the re-

spondents taking the law in their own hands, seizing premises under a valid and subsisting lease, in violation of the supersedeas it itself created in Exhibit C, the contract attached to the Amended Complaint in 65 CH 6863, in violation of the decree entered on July 13, 1966, and of the trial court's order of August 22, 1966 to keep the *status quo* till review by this Court?

c. As to Title 42 U.S.C. secs. 1983, 1985, 1988, again Judge Wisdom's observations at p. 579, in *Dombrowski*, apply:

> "In the Civil Rights Act, Congress established a distinct federal cause of action in favor of those whose constitutional rights have been invaded . . . *As a matter of law, since such cases involve a federal question, the right existed anyway.*"

2. Petitioner argued throughout the proceedings in the lower courts that *Ex Parte Young* was controlling on the trial court's exercise of jurisdiction (A. 25; 43; 44; 45; 46; 47).

a. Again, Judge Wisdom's summary is worth noting, when he referred to the doctrine of abstention "now developing as nicely as if Dr. Frankenstein were in charge of it":

> "The landmark authority on the power of a federal court to enjoin state enforcement of a law impairing a federal protected right is *Ex Parte Young* . . . although recognition of such constitutional power goes back to *Osborn* v. *Bank of the U. S.*, 1824, 9 Wheat. 738."

b. Both the trial court and the Court of Appeals ignored *Ex Parte Young* completely! The Court of Appeals ignored *Dombrowski* completely, though the trial court cited it inaccurately. Its opinion is directly contrary to both of these decisions of this Court (Rule 19 (1)(b)).

3. The Court of Appeals' Opinion *misstated* material allegations in the Amended Complaint:

a. At the bottom of page 2 of the opinion, it is stated that the Amended Complaint stated

> "that with the completion of the Civic Center, to which the Cook County Courts were removed, the law library of the Institute was moved August 12, 1966 to that location, contrary to the desires of some 600 of the Institute's approximate 1400 members; . . ."

(1) No such allegation appeared in the Amended Complaint. The impression this quotation in the opinion creates is that a minority only of the Institute's members were opposed to removal from the 10th floor of the Cook County Building, Chicago, to the Civic Center.

(2) This quotation from the opinion took out of context completely the allegations to the contrary in paragraphs 7, 8, and 9 of the Amended Complaint (A. 6-7, 23, par. numbered 3; A. 29, middle of page) (to which that quotation referred clearly).

a. Had time been adequate for a more intensive campaign (A. 32-37) for proxies and declarations of intent, (the call permitting only 10 working days) a greater percentage of the membership would have opposed. What counts, legally, of course, is the vote at the June 18, 1965 members' special meeting: 600 vs. 13!

(3) The quotation in the opinion states erroneously the removal occurred August 12, 1966; the lock-out of the members occurred on that date; the removal occurred from August 22, 1966 through September 2, 1966 (A. 10, pars. 16 and 17 of the Amended Complaint). The further impression is created that the membership disapproval and the removal were practically contemporaneous.

(4) The last paragraph of page 3 of the opinion made the essence of the complaint a dispute between "some" members of the Institute and its Board, in the face of a record that pointed out repeatedly that 600 members, almost all that voted, voted against the "donative" contract at their June 18, 1965 special meeting, and that, (pursuant to a conspiracy between the respondents and unfaithful members of the Institute's Board, six of whom Cook County made its undisclosed agents on the Cook County Library Advisory Board), such a contract was, nevertheless, executed on December 6, 1965. (The Amended Complaint, par. 8, A. 7; par. 4, A. 23; Affidavit of William Hettleman, A. 29).

a. Respondents' brief and oral argument before the Court of Appeals carried the above theme of the insubstantial, and even frivolous, character of the suit at bar, a step further: the petitioner and the Institute members had no pecuniary interest in the Chicago Law Institute, as alleged in par. 20 of the Amended Complaint, because, concededly, it was not created for profit. Their motion to dismiss and the lower court's order of dismissal, had to admit the truth of the allegations in par. 20. The private foundation of The Chicago Law Institute and the rights, pecuniary and otherwise, of the members has been gone into at great length in the Jurisdictional Statement, in the companion cases on appeal from final orders of the Supreme Court of Illinois.

4. The Court of Appeals' opinion *omitted completely* references to vital ultimate facts alleged in the petitioner's Amended Complaint and supported by the Record:

a. The constant intimidation and threats of ouster pervaded the atmosphere since 1961, becoming stronger as

the June 18 special meeting approached (A. 28), reaching an aggravated form thereafter while 65 CH 6863 was going through the Cook County trial court (A. 11), before its opinion and decree were filed. (A. 20 contains the photostatic copies of newspaper items instigated by Cook County:

> The *Chicago's American* of June 20 and 21, 1966:
>
> "The 10th floor quarters of the County Building, now housing the library, will be lost to the Institute and members have been searching for new space."
>
> "The County has given the Institute notice it will have to move.")

These threats culminated in the overt acts of August 10, 1966 (A. 9, Coman letter), the August 22-September 2, 1966 physical seizure of the Institute's papers and effects (A. 10, pars. 16-17), and in defiance of the July 13, 1966 decree and the trial court's order of August 22, 1966 (Jurisdictional Statement, in companion cases, on appeals from the final orders of the Supreme Court of Illinois).

b. Page 3, lines 5-6 from the top, of the Court of Appeals' opinion stated "that the Institute's executive committee voted like authority (on November 12, 1965) to the Institute's president" to execute the purported "donative" contract, Exhibit C, but fails to state the vote was illegal as contrary to the members' almost unanimous vote at their special meeting, on June 18, 1965; or that "the contract with Cook County . . . had not been presented even to them, prior to or at the said meeting for study and analysis" (A. 7, par. 10); or that 2 of the 4 votes were cast by 2 undisclosed agents of Cook County, its appointees by ordinance of June 17, 1965 to the Cook County Library Advisory Board, in conflict with their fiduciary duty to the Institute members.

c. Although the Court did state, in the middle of page 3 of its opinion, that the petitioner had claimed, set up and asserted in his Amended Complaint and throughout the proceedings in the trial, and intermediate appellate, courts his federally protected rights, including immunity from threatened state action being taken for which injunctive relief was sought, it did not, nevertheless, refer to the specific constitutional provision alleged to be infringed (A. 12, par. 20), such as Art I, sec. 10, and amendments 4, 5, 14(1), since this Court has indicated such a requirement for it to entertain jurisdiction to review.

5. The last paragraph of the Court of Appeals' opinion misapplied the impertinent *Ex Parte Collins* and *Pierre v. Jordan*, cited by the respondents, to prove that the Cook County ordinances (Appendix B to this Petition) were not "state statutes" within sec. 2281, but merely local law.

a. Both cases involved cities. They stand differently from counties, a subdivision of the States: Mr. Justice Taney made this clear in *Md. v. B & O R.R. Co.*, 3 How. at 550 bottom; and this Court further in *C.B. & Q. R.R. v. Otoe County*, 83 U.S. at 676. The *County of Cook v. City of Chicago*, 311 Ill. at 239-240 summarizes the distinction clearly:

> "*A Municipal corporation is created principally for the advantage and convenience of the* locality. *County* and township *organizations are created in this State with the view to aid in carrying out the policy of the State at large for . . . the administration of justice.* The powers and functions of *county* and township *organizations, therefore, as distinguished from MUNICIPAL CORPORATIONS, have a direct and exclusive bearing on and reference to the general, rather than local, policy of government of the State* (citing cases from the State Reports of Ala., Ky., N. C., Ohio,

> Wisc., and 1 Dillon, 4th edit., Sec. 23). Counties and Towns, being purely auxiliaries of the State, owe their creation to the general statutes of the States which confer upon them all the powers which they possess and prescribe all the duties and liabilities to which they are subject." (italics supplied)

The county's legislative powers are not, thus, local but as general as that of the state. Its ordinance is a "state statute."

b. *Pierre* v. *Jordan,* 333 F(2) 951 (9th CCA) seems to have been soundly criticized, as erroneous, in 78 Harvard Law Rev. 1264 (April, 1965).

6. The top of page 4 of the Court of Appeals' opinion relied on its own decision in *Ream* v. *Handley,* cited by the respondents. This was a mere dictum and contradicted Webster's exposition in *Dartmouth College* of a corporate member's rights. It is in conflict, moreover, with its own later *Stamler* case, cited in its opinion's closing paragraph (Rule 19(1)(b)).

a. *Ream* v. *Handley* held, as did *Pierre* v. *Jordan,* that sec. 2281 was inapplicable because there had been no threat to take property, and so no injunctive relief could be granted, nor was there evidence of discrimination in the purchase of surrounding property.

b. In *Stamler,* (called to trial court's attention, A. 53) a Civil Rights case, the Court held and Judge Kiley stated, as did Judge Wisdom in *Dombrowski,* that there was no doubt the complaints "at least formally state a basis for equitable relief" and "the case presented otherwise comes within the requirements of the three-judge statute."

c. The petitioner sought for himself and all Institute members all the franchises, rights, privileges, and im-

munities they had under the Institute's special charter of 1857, protected by the U.S. Constitution and civil rights laws, which do not necessarily include monetary rights, but which are personal, as well as property, rights many students of constitutional law contending they are indistinguishable. The petitioner and the Institute members' support stems from the *Dartmouth College* case, 4 Wheat. 518 (1819). Arguing for this position, which Mr. Chief Justice Marshall and Mr. Justices Washington and Story followed, from 2 Bl., *Com.* 37, Webster stated at pages 572-573:

> "It cannot be necessary to say much in refutation of the idea that there cannot be a legal interest, or ownership, in anything which does not yield a pecuniary profit; *as if the law regarded no rights but the rights of money, or of visible tangible property.*"

7. The Court of Appeals' opinion ignored 2 cases (1 in the 3d CCA, and the other in this Court) called to its and the district court's attention (A. 49) which conflict with its view of equitable abstention (Rule 19(1)(b)).

a. *American Houses, Inc.* v. *Schneider,* 211 F(2) 880 (1954) is closely analogous to the case at bar, almost on all fours with it. An *in rem* action was begun by the plaintiff-tenant in the federal court to restrain a landlord, claiming the tenant's lease expired, from taking any steps under the state's landlord act to oust him. In affirming the trial court's injunction, Judge Hastie, speaking for the Third Circuit Court of Appeals' refusal to be bound by the doctrine of equitable abstention, and indicating the argument based on sec. 2283 irrelevant, said at p. 885, second column:

> "Otherwise a federal court could never effectively enjoin a defendant in any matter within the concurrent jurisdiction of national and state courts."

(1) Three related cases of stalling in the state courts were called to the trial and appellate court's attention violating Art. II, § 19 of the Illinois Constitution (Bill of Rights)

> ("Every person . . . ought to obtain, by law, right and justice freely, . . . promptly and without delay.") (A. 51, Main Brief 11-15; Reply Brief, p. 9).

b. *Mosher* v. *City of Phoenix,* 287 U.S. 29 (1932) is inconsistent with *Ex Parte Collins,* 277 U.S. 565 (1928). The City of Phoenix passed an ordinance for street improvements. Mrs. Mosher sued to enjoin taking her property without compensation. No diversity was alleged, as jurisdiction was founded on a federal question. Her petition was denied on the ground that her allegations did not raise a federal question. In reversing, this Court stated unanimously, through Mr. Chief Justice Hughes, at page 32:

> "This Court held that 'whether the plaintiff has any rights that the City is bound to respect can be decided only by taking jurisdiction of the case' and that *it was necessary for the district court to deal with the merits.* . .
>
> "We are of the opinion that the allegations of the bill of complaint, that the City, acting under the color of state authority, was violating the asserted private right secured by the Federal Constitution, presented a substantial federal question and that it was error of the District Court to refuse jurisdiction."

c. It may not be inappropriate to note here that par. 6 of the Amended Complaint (A. 6) alleged the participation of the federal judges, in Chicago in 1962, in negotiations to acquire the library of The Chicago Law Institute. The judges included the trial judge Julius J. Hoff-

man, a former Cook County Circuit Court judge, and Circuit Court Judge Castle, a former DeKalb County judge, who wrote the opinion.

C. This Court Should Take Jurisdiction Because It Is A Federal Question Itself Whether The Constitutional Rights Of The Petitioner And All Like Him Have Been Infringed. Additionally, As Pointed Out In The Companion Cases On Appeal From The Final Order Of The Supreme Court Of Illinois, Jurisdictional Statement, The Federal Case Represents But An Extension Of The Cook County Technique To Substitute Appropriation Of Private Property Of A Private Corporation For Public Use Without Just Compensation.

The danger, in this age of public indulgence in the seizure of private property for public use, is that the trend will develop to misapply the *cy pres* doctrine.

CONCLUSION.

For the above reasons, petitioner respectfully asks that this suit and the proceedings in the trial and appellate courts be reviewed.

Respectfully submitted,

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